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Supreme Court of the United States

OCTOBER TERM, 1933.

No. 561

INTERNATIONAL MILLING COMPANY, *Petitioner,*

vs.

COLUMBIA TRANSPORTATION COMPANY, *Respondent.*

BRIEF OF PETITIONER

I.

THE OPINIONS OF THE COURT BELOW

The first appeal to the Supreme Court of Minnesota was from the order of the district court vacating and setting aside the service of the summons and simultaneous levy under a writ of attachment. The opinion of the Minnesota Supreme Court is reported in 250 N. W. 186 and also appears, commencing on page 67, in the record.

After the affirmance of this order, a judgment was entered in the trial court, from which a subsequent appeal was taken to the Supreme Court of Minnesota, the purpose being to give finality to the decision. The *per curiam* opinion by which the Minnesota Supreme Court adheres to its former ruling is reported in 250 N. W. 186, and also appears in the record, at page 80.

II.

JURISDICTION

1. The date of the judgment to be reviewed, being that rendered by the Supreme Court of Minnesota, in the second appeal numbered 29814, from the final judgment of the District Court of St. Louis County, is October 17, 1933 (R. 81).

2. The specific claims advanced and rulings made in the lower court which are relied upon as the basis of this Court's jurisdiction, are as follows:

After the service of the attachment and of the summons, the defendant, in the trial court, gave a bond for the release of the attachment and, having secured such release, appeared specially and moved for an order setting aside the service of the summons and vacating the attachment on the grounds:

(a) That the levy of the attachment operated to place an unreasonable burden upon interstate commerce; and,

(b) That the service of the summons and prosecution of the action operated to place an unreasonable burden upon interstate commerce.

After a hearing, the trial court granted said motion upon the specific grounds above mentioned. This ruling having been affirmed by the Supreme Court of Minnesota, a judgment was entered in the lower court, which was affirmed by the Supreme Court of Minnesota, as above stated.

There was thus specially set-up and claimed by the defendant a right, privilege or immunity under the Federal Constitution.

3. The statutory provisions under which the jurisdiction of this Court is invoked are Judicial Code, Sec. 237, as

amended by Act of February 13, 1925, 43 Stat. 937, U. S. C. A., Title 28, Sec. 344.

4. Cases believed to sustain the jurisdiction of this Court are as follows:

Davis v. Farmers Cooperative Co., 262 U. S. 312;

Atchison, T. & S. F. R. Co. v. Wells, 265 U. S. 101;

Missouri ex rel. St. Louis B. & M. R. Co. v. Taylor, 266 U. S. 200;

Hoffman v. Missouri ex rel. Foraker, 274 U. S. 21;

Michigan Central Railroad Co. v. Mix, 278 U. S. 492;

Denver & R. G. W. R. Co. v. Terte, 284 U. S. 284;

in all of which the jurisdiction of this Court was invoked by certiorari or by writ of error, to determine the question of whether or not the prosecution of the particular action involved operated to place an undue burden upon interstate commerce, in violation of the commerce clause of the Constitution.

III.

STATEMENT OF THE CASE

The cause comes before this Court upon certiorari granted December 11, 1933 (R. 83).

The proceeding is an action at law by International Milling Company, a Delaware corporation, duly qualified to do business in Minnesota, as plaintiff, against Columbia Transportation Company, a Delaware corporation not qualified to do business in Minnesota (but which operates its vessels in interstate commerce over Minnesota waters), as de-

fendant, to recover for damage to a cargo of wheat while stored in the steamer "W. C. Richardson" at South Chicago, Illinois, from about January 1, 1930 to May 1, 1930. Jurisdiction of the defendant to the extent of the property attached was acquired through the attachment of one of the vessels of the defendant company, the steamer "C. Russell Hubbard". (R. 8).

The business of the defendant is that of operating bulk freight steamers between various ports of the United States and between ports of the United States and Canada. It owns and operates ten freight steamers loading and unloading cargoes in Minnesota and other ports (R. 18-19). The business of the defendant is largely, if not entirely, interstate commerce; it maintains a representative in Duluth, Minnesota, who issues bills of lading and reports movements of the several vessels to the defendant, and loads and unloads its vessels at termini within the State of Minnesota during navigation season, and operates all of its vessels which touch the ports of Duluth, Minnesota and Superior, Wisconsin, over approximately ninety miles of water over which the State of Minnesota has territorial jurisdiction (R. 42).

It appears without dispute that the attachment and service of process was made while the vessel was upon waters over which the State of Minnesota has concurrent jurisdiction, pursuant to Article II, Section 2, of the Constitution of Minnesota, which reads as follows:

> "The State of Minnesota shall have concurrent jurisdiction on the Mississippi and over all rivers and waters bordering on the said State of Minnesota, so far as the same shall form a common boundary to said state, and any other state or states now or hereafter to be formed by the same; and said rivers and waters, and navigable waters leading into the same, shall be common highways and forever free, as well to the inhab-

itants of said state as to other citizens of the United States, without any tax, duty, impost, or toll therefor."

Boundaries of the state are fixed and determined by Section 1 of the same Article, which, in part, reads as follows:

"* * * thence east along the northern boundary of said state to the main channel of the Mississippi River; thence up the main channel of said river and following the boundary line of the State of Wisconsin until the same intersects the St. Louis River; thence down the said river to and through Lake Superior, on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and British possessions; thence up Pigeon River and following said dividing line to the place of beginning."

Immediately after the levy and attachment and service of the summons and complaint, the defendant filed an undertaking in the sum of $40,000 (R. 9), for the release of the attachment; and the court thereupon ordered the attachment released (R. 11). The defendant, appearing specially, then secured an order to show cause (R. 11) why an order should not be made setting aside the attachment upon the following grounds:

1. That such an order had been previously entered in a case between the same parties, involving the same matter, and was therefore *res adjudicata*. This point was not discussed or referred to by the trial court in its order, nor by the Supreme Court of Minnesota in its opinion, and is not here involved.

2. That the service and levy of the attachment operated to place an unreasonable burden upon interstate commerce.

3. That the service of the summons and the prosecution of the action operated to place an unreasonable burden upon interstate commerce.

This motion, which was heard upon affidavits and oral testimony, was granted (R. 64), "on the ground and for the reason that said purported service and levy of attachment and purported service of summons in the main action and the prosecution of said action in this Court operate to place unreasonable conditions, burdens and restraints upon interstate commerce, in violation of the provisions of Article I, Section 8, subdivision 3 of the Constitution of the United States."

Upon appeal by the plaintiff to the Supreme Court of Minnesota, this order was affirmed by a divided court, three of the seven justices dissenting, said appeal being Docket No. 29466 in the Minnesota Supreme Court.

Thereafter judgment was entered in the trial court, from which a second appeal was taken for jurisdictional purposes, and resulted in affirmance of the judgment on the basis of the court's previous decision. This second appeal was No. 29814 on the docket of the Supreme Court of Minnesota.

A certified copy of the entire record of the case in the District Court of St. Louis County, Minnesota, and in the Supreme Court of Minnesota is before this Court, including both Appeal No. 29466 and Appeal No. 29814 in said Minnesota Supreme Court.

The sole question involved is whether the prosecution in Minnesota of a transitory cause of action by a foreign corporation duly qualified to do business within the state, against a foreign corporation not qualified to do business in the state, but which operates, in interstate commerce, a

fleet of vessels throughout the navigation season to and from Minnesota ports and upon waters over which the State of Minnesota has jurisdiction, upon a cause of action which arose without the State, and wherein jurisdiction was obtained by the attachment of property within the state to the extent of such property, imposes an unreasonable obstruction or undue burden upon interstate commerce, in violation of the commerce clause of the Constitution (Article I, Section 8, subdivision 3).

It was the contention of the petitioner that under the decisions of this Court no unreasonable burden was so imposed and that the cause was one which could be tried within the State of Minnesota without violation of the commerce clause.

The decisions upon which such reliance was placed are the following:

Davis v. Farmers Co-operative Co., 262 U. S. 312;
Atchison, T. & S. F. R. Co. v. Wells, 265 U. S. 101;
Missouri ex rel. St. Louis B. & M. R. Co. v. Taylor, 266 U. S. 200;
Hoffman v. Missouri ex rel. Foraker, 274 U. S. 21;
Michigan Central Railroad Co. v. Mix, 278 U. S. 492;
Denver & R. G. W. R. Co. v. Terte, 284 U. S. 284.

IV.

SPECIFICATION OF ERRORS

The following errors of the Supreme Court of Minnesota are assigned and specified as those intended to be urged:

In affirming the order of the district court granting defendant's motion to vacate and set aside the attachment and

summons, and thereafter affirming the final judgment of the district court to the same effect, the Supreme Court of Minnesota erred in holding that the attachment and the service and levy thereof by the sheriff of St. Louis County on July 1, 1932 and the service of summons on the defendant by delivering a copy thereof to Otto Gentz on July 1, 1932, should be vacated and set aside on the ground that such service and the prosecution of said action in the District Court of Minnesota operate to place unreasonable conditions, burdens and restraints upon interstate commerce, in violation of the provisions of Article I, Section 8, subdivision 3, of the Constitution of the United States.

V.

ARGUMENT

Summary of Argument

Point A. The decision below is contrary to and in conflict with the principles applied by this Court in prior decisions.

Point B. The service and levy of the attachment does not constitute an undue burden upon interstate commerce.

Point C. The prosecution of the action in Minnesota does not constitute an undue burden upon interstate commerce, because:

1. The defendant operates within the territorial jurisdiction of Minnesota;

2. The plaintiff is, in legal effect, a resident of Minnesota.

POINT A.

The decision below is contrary to and in conflict with the principles applied by this Court in prior decisions.

This is a suit by a foreign corporation qualified to do business within the State of Minnesota, against a defendant which is a foreign corporation not qualified to do business within the State of Minnesota but which operates in interstate commerce, a fleet of vessels over waters within the territorial jurisdiction of Minnesota, upon a transitory cause of action which arose without the State of Minnesota.

It is alleged in the complaint (R. 2) and not denied at any place in the record, that the plaintiff is a Delaware corporation having its principal place of business in Minnesota and that it is doing business in this state. The Minnesota Supreme Court assumed, and based its decision upon the assumption, that the plaintiff was duly qualified to do business within Minnesota. This assumption, which is conclusive so far as the present situation is concerned, was no doubt based upon the following decisions of the Minnesota Supreme Court, which hold that compliance with the statute and due qualification to do business are presumed in the absence of evidence to the contrary:

Fidelity & Casualty Company of New York v. Eickhoff, 63 Minn. 170, 65 N. W. 351;

Langworthy v. Garding, 74 Minn. 325, 77 N. W. 207;

State v. Murphy, 113 Minn. 405, 129 N. W. 850;

State ex rel. Miller v. Reiter, 140 Minn. 491, 168 N. W. 714.

In *State v. Murphy*, supra, the Supreme Court of Minnesota said:

"Compliance with our foreign corporation statutes will, in the absence of allegation or evidence to the contrary, be presumed."

In *Langworthy v. Garding, supra,* the same court said:

"While there has been some diversity of opinion on this subject in the different states, we believe the rule which applies to the acts of a private individual is the proper one to be applied to the acts of a corporation, whether foreign or domestic, and that it is to be presumed that all things are rightly done unless the circumstances of the case overturn the presumption. * * * We have not overlooked Solomon v. Dreschler, 4 Minn. 197 (278), which was practically followed in Olson v. Hurley, 33 Minn. 39, 21 N. W. 842; but we now hold that it was unnecessary for plaintiff, as part of his cause of action, to show that the insurance company had complied with the statute and had obtained a certificate of authority to transact business within our borders. Noncompliance with the law in reference to foreign corporations was a matter of defense."

In *Fidelity & Casualty Company of New York v. Eickhoff, supra,* the same court said:

"The first objection urged against the complaint is that it does not allege that the plaintiff had a license to do an insurance business in this state, as required by G. S. 1894, Sec. 3331. Notwithstanding that there would seem to be some decisions holding otherwise, we are of opinion that the case is one where the maxim '*Omnia rite acta praesumuntur*' is applicable. Noncompliance with the laws of this state will not be presumed, but, if it exists, must be set up in defense."

Furthermore, the Supreme Court of Minnesota in the present case has found and held that the plaintiff has a cor-

porate residence in Minnesota, as appears from the following quotation from the opinion (R. 69):

> "We do not forget that plaintiff has a corporate residence in Minnesota, or that, although a foreign corporation, its principal office is here."

Thus, in effect, the present suit is brought by a resident plaintiff, for the reason that a foreign corporation qualified and licensed to do business in this state has the same rights relative to the bringing of suits as a resident of the state and a domestic corporation.

G. Heileman Brewing Co. v. Peimeisl, 85 Minn. 121, 88 N. W. 441;

Thomas Mfg. Co. v. Knapp, 101 Minn. 432, 112 N. W. 989.

In *G. Heileman Brewing Co. v. Peimeisl, supra*, the Minnesota Supreme Court, in referring to the statutes of the state relative to the qualification of foreign corporations for pecuniary profit to transact business in this state, said:

> "This legislation is neither hostile nor unjust to foreign corporations, for its purpose is to place them on an equality with domestic corporations, both as to privileges and burdens; and it is the duty of the courts of the state to give those provisions full effect and not emasculate them by any technical construction."

This language is also cited with approval in the later case of *Thomas Mfg. Co. v. Knapp, supra.*

The Columbia Transportation Company, respondent here, is a Delaware corporation with its principal office in Wilmington, Delaware. It maintains an office for the transaction of business in Cleveland, Ohio (R. 15). It is not

qualified to do business in the State of Minnesota (R. 15). It owns and operates ten freight steamers (R. 15), loading and unloading cargoes at Minnesota ports, and traversing approximately ninety miles over waters over which the State of Minnesota has territorial jurisdiction (R. 42).

As stated by Mr. Justice Loring (R. 74) in one of the dissenting opinions in the court below:

> "Fortunately for the steamship line, it does not have to own right of way or trackage, but it does operate its ships into state waters and there dock, load and unload them. This it does with its own crews and employes just as much under its control as if it were operating a railway to convey the same goods or passengers. It brings its property within the state just as effectively and for the same purpose as does a railroad."

The gist of the action (R. 2 ff.) is that about January 1, 1930, at South Chicago, Illinois, defendant stored for plaintiff in one of its ships, the "W. C. Richardson", a large cargo of wheat; that the grain was kept in storage until May, 1930 and then transported by defendant to Buffalo, New York; that it was in good order when delivered aboard the "Richardson" but that during the course of storage in South Chicago and transportation down to Buffalo, it was damaged, through the negligence of the defendant, in the sum of approximately $20,000. The cause of action thus alleged arose without the State of Minnesota.

This Court has had occasion to pass upon the general question here involved in the six cases cited under Section II (4) of this brief. Three of them were decided upon certiorari and three upon writ of error. In each of them the question involved was, in ultimate effect, whether the prosecution of the particular action was such a burden upon interstate commerce as to violate the commerce clause; and in each of them a railroad was involved.

We refer briefly to these six cases and analyze them as follows:

Davis v. Farmers Co-operative Company, 262 U. S. 312, decided in 1923, was the first case to hold that the commerce clause of the Federal Constitution affects the question of the proper state for trial. In that case, a Kansas corporation brought suit in a state court of Minnesota, against the Director General as agent of the Santa Fe Railroad, another Kansas corporation, to recover for loss of grain in transit between two points in Kansas. The railroad did not own or operate a line in Minnesota; but it maintained an agent there for the solicitation of traffic. The State of Minnesota by statute permitted service of process upon such an agent. This Court held this statute to be invalid as a violation of the commerce clause. Thus the doctrine was established that an unreasonable burden might be placed on interstate commerce by subjecting a carrier to legal proceedings in a state where it did not operate. In the *Davis* case, (a) plaintiff was a nonresident; (b) defendant was a nonresident; (c) defendant neither owned nor operated a railway within the state; (d) the cause of action arose outside of Minnesota.

This Court, in the *Davis* case, however, specifically pointed out that,

pointed out that a foreign corporation engaged exclusively in interstate commerce is not, because of that fact, immune from the ordinary processes of the courts of a state where its busines is entirely interstate in character. Citing International Harvester Co. v. Kentucky, 234 U. S. 579. It must submit, as to jurisdiction, to the requirements of orderly, effective administration of justice, although thereby interstate commerce is incidentally burdened.

The present case differs from the *Davis* case in the following respects: (a) here the plaintiff, in contemplation of

law, is a resident of the state, while in the *Davis* case the plaintiff was a nonresident; (b) in the present case, the defendant operates a line of vessels to Minnesota ports and over Minnesota waters, while in the *Davis* case it neither owned trackage nor operated within the state.

The next case decided by this Court was *Atchison, T. & S. F. R. Co. v. Wells*, 265 U. S. 101. The decision followed the *Davis* case for the reason that the controlling features were precisely similar to those in the *Davis* case.

The next case decided by this Court was *Missouri ex rel. St. Louis B. & M. R. Co. v. Taylor*, 266 U. S. 200. Here the plaintiff was a foreign corporation doing business in Missouri—in other words, a resident. The defendant was a Texas corporation not doing business in Missouri. The action was for damages to a shipment of goods deliverable in Missouri; and jurisdiction was acquired by garnishment of traffic balances due from an interstate carrier having a place of business in Missouri and, "for aught that appears" the negligence complained of occurred in Missouri. Under these circumstances, this Court held that the garnishment and prosecution of the action in Missouri did not unduly burden interstate commerce.

The main differences between the *Taylor* case and the present case are: (a) the defendant in the *Taylor* case did not operate within the state, while in the present case it does; and (b) in the *Taylor* case the cause of action was assumed to have arisen within the state, while in the present case it concededly arose without the state.

Still later this Court decided *Hoffman v. Missouri ex rel. Foraker*, 274 U. S. 21, which was an action in the State of Missouri, by a resident of Kansas, to recover for a wrongful death which occurred in Kansas, against a Missouri railroad. Under this state of facts, this Court held the burden not to be unreasonable.

The principal differences between the *Hoffman* case and the present case are as follows: (a) in the *Hoffman* case the plaintiff was a nonresident, while here it is a resident; (b) in the *Hoffman* case the defendant was a resident operating within the state, while here it is a nonresident operating within the state.

Next was decided *Michigan Central Railway Co. v. Mix*, 278 U. S. 492, in which the plaintiff was a resident of Michigan, who removed to Missouri after the cause of action accrued; and before the suit was brought she became a resident of that state. The defendant was a Michigan corporation and the action was commenced in Missouri. The defendant railroad did not have a line in Missouri but maintained only a soliciting agent. The cause of action accrued in Michigan. The Court held the suit, under these circumstances, to be an unreasonable burden on interstate commerce.

Thus, the principal differences between the *Mix* case and the present case are: (a) in the *Mix* case the plaintiff was a nonresident of the state, who moved into the state after the cause of action accrued, while in the present case the plaintiff is a resident; and (b) in the *Mix* case, the defendant neither owned nor operated a line within the state, while in the present case the defendant operates a line of vessels to Minnesota ports and over Minnesota waters.

The latest case, so far as we know, to be decided by this Court, wherein the present question was involved, was *Denver and R. G. W. Ry. Co. v. Terte*, 284 U. S. 284. The action was brought in Missouri for damages under the Employers' Liability Act. The plaintiff was injured in Colorado but became a bona fide resident and citizen of Missouri after the cause of action arose. Negligence was charged jointly against the Santa Fe and the Rio Grande railroads. The Rio Grande was a Delaware corporation, neither owning nor

operating a line in Missouri and not qualified to do business there, but maintaining an agent for traffic solicitation. The Santa Fe was a Kansas corporation, both owning and operting a line in Missouri and duly qualified to do business in Missouri. Jurisdiction of the Rio Grande was obtained by attachment. This Court held that the suit against the Santa Fe did not constitute an undue burden upon interstate commerce, but that the suit against the Rio Grande did.

Thus, we have the following differences between the *Terte* case and the present case: first, as to the Santa Fe: (a) in the *Terte* case the plaintiff became a resident of the state after the cause of action arose and, in the present case, the plaintiff was at all times a resident; (b) in the *Terte* case the defendant Santa Fe was a resident, while in the present case the defendant is a nonresident, operating its facilities within the state in interstate commerce. As to the Rio Grande, we have the same difference as to the party plaintiff and, in addition, the defendant Rio Grande neither owned nor operated a line within the state, whereas in the present case the defendant operates a line of vessels over Minnesota waters.

From the foregoing analysis, it is evident that this Court has not passed upon the precise situation here involved, where we have a suit (a) by a resident plaintiff, (b) against a foreign corporation, (c) operating in the state in interstate commerce, (d) on a cause of action which arose outside the state.

From the decisions of this Court the following general principle would appear to be applicable:

Assuming jurisdiction can be obtained, where the defendant is operating within the state wherein a suit upon a transitory cause of action is brought, the prosecution of the action does not unduly burden interstate commerce, regardless of the residence of the plaintiff and regardless of where

the cause of action arose; but where the defendant is not operating in the state, the cause of action must have arisen within the state or it is an undue burden upon interstate commerce.

While it may not be possible or even desirable to lay down a rigid rule applicable to all cases, it is, nevertheless, true that if any general principle is deducible from the cases already considered by this Court, it is expressed in the foregoing.

The problem is well expressed by Mr. Chief Justice Rugg, of the Massachusetts Supreme Judicial Court, in *Cressey v. Erie R. Co.*, 278 Mass. 284, 180 N. E. 160 (hereinafter referred to) where he says:

> "The problem is to balance the interests of individuals in the enforcement of private rights, on the one side, against the interests of the public as a whole in untrammeled and efficient interstate transportation on the other side."

POINT B.

The service and levy of the attachment does not constitute an undue burden on interstate commerce.

The prevailing opinion in the court below did not differentiate between (a) service and levy of the attachment and (b) the trial of the action; although the order of the trial court, which was affirmed, set aside the service and levy of the attachment *and* the service of the summons as operating to place unreasonable burdens upon interstate commerce.

We do not believe it will be seriously contended that the service and levy of the attachment in and of itself is an un-

due burden upon interstate commerce because, as this Court said in the *Terte* case, 284 U. S. 284, 287:

> "Obviously, the burden and expense which the carrier must incur in order to make defense in a state where the accident did not occur has no relation to the nature of the process used to bring it before the court."

In the *Taylor* case, supra, jurisdiction was obtained solely by reason of the garnishment of traffic balances due from a connecting interstate carrier having a place of business in Missouri. As to this the Court said on page 207 of the opinion:

> "To require that, under such circumstances (as existed in the *Taylor* case) the foreign carrier shall submit to suit within a state to whose jurisdiction it would otherwise be amenable by process of attachment, does not unreasonably burden interstate commerce."

It seems reasonably clear, therefore, that if the action itself is properly triable within a given state, the mere fact that jurisdiction must be obtained by attaching property which is used in interstate commerce is not of itself a matter of importance. In the present case, therefore, if the trial of the action brought by a resident plaintiff against a defendant regularly bringing its facilities and property within the territorial jurisdiction of Minnesota, does not operate to place an unreasonable burden on interstate commerce, then the fact that jurisdiction of that defendant was obtained by attachment of property used in interstate commerce must be considered in the light suggested by the dissenting opinion of Mr. Justice Olson in the court below, where he says:

> "I dissent on the ground that by the attachment of property within this state jurisdiction to the extent of

such property was acquired and where a foreign corporation brings its property here and jurisdiction is acquired over it, the interference, if any, with interstate commerce is but incidental and in fact invited by the defendant. Rosenblet v. Pere Marquette R. Co., 162 Minn. 55."

The correctness of this is further borne out by the statement of this Court in the *Davis* case, to the effect that the mere circumstance that property is used in interstate commerce does not render it imune from seizure by attachment or garnishment, in support of which statement this Court cited *Davis v. Cleveland C. C. & St. L. Co.*, 217 U. S. 157, although the statement is qualified by the further statement that the use of such means of reaching a foreign carrier engaged in interstate commerce may or may not be a wrongful interference, depending upon the circumstances of the case.

As a practical matter, there was no substantial delay or burden caused by the attachment here which was released on bond within a very few hours.

In *Davis v. Cleveland*, supra, this Court passed upon the question here under consideration under the following circumstances: The plaintiff brought an action in Iowa against the defendant railway company, an Indiana corporation. The plaintiff was a citizen of Iowa. Jurisdiction was obtained by levy and attachment upon freight cars found within the State of Iowa, which defendant claimed were engaged at the time in interstate commerce. The defendant, appearing specially, filed a motion to set aside the attachment, on the ground that it unreasonably burdened interstate commerce. The lower court granted the motion; and in reversing this decision and holding that there was no undue burden on interstate commerce by the attachment, this Court says:

"The state may pass laws enforcing the rights of its citizens, which affect interstate commerce but fall short of regulating such commerce in the sense in which the Constitution gives exclusive jurisdiction to Congress. (Citing cases). The interference with interstate commerce by the enforcement of the attachment laws of a state must not be exaggerated. It can only be occasional and temporary. The obligations of a railway company are tolerably certain and provisions for them can be easily made. Their sudden assertion can be almost instantly met; at any rate, after a short delay and without much, if any, embarrassment, to the continuity of transportation."

These statements are clearly applicable to the case at bar.

In *Iroquois Transportation Co. v. Delaney Forge & Iron Co.*, 205 U. S. 354, the facts were that a vessel was partially constructed at Detroit, and then taken to Loraine, Ohio, where the work was completed. She was afterwards engaged in carrying cargoes between points on Lake Erie and Lake Superior. She did not stop at Detroit. The plaintiff having performed certain work on the vessel and claiming a lien, attached the vessel on a trip while she was passing Detroit, on process issued out of the courts of Wayne County, Michigan. The boat was in the Detroit River, with Michigan on one side and Canada on the other.

The Iroquois Company gave a bond under the statute for the release of the vessel. In upholding the right to attach the vessel under such circumstances, this Court said:

"It is urged that the attempt to enforce the lien on the vessel was while she was engaged in interstate commerce, and therefore proceedings against her were unlawful and void in view of the exclusive control of this subject by Congress under the Constitution and Laws of the United States. But it must be remembered that,

concerning contracts not maritime in their nature, the state has authority to make laws and enforce liens, and it is no valid objection that the enforcement of such laws may prevent or obstruct the prosecution of a voyage of an interstate character. The laws of states enforcing attachment and execution in cases cognizable in state courts have been sustained and upheld."

These cases, we believe, demonstrate that if the action is one which is properly cognizable by the courts of a given state, and if the prosecution of the action does not unreasonably restrain or burden interstate commerce, then the laws of that state giving the right of attachment to obtain jurisdiction to the extent of the property attached should be sustained, even though the property attached is being used in interstate commerce.

We therefore proceed to a consideration of the question of whether, under the six decisions of this Court upon this subject, the prosecution of the action in Minnesota will unduly and unreasonably burden interstate commerce.

POINT C.

1. The prosecution of an action in Minnesota does not constitute an undue burden upon interstate commerce, because the defendant operates within the territorial jurisdicion of Minnesota.

Four of the seven Justices of the Minnesota Supreme Court ignored, or regarded as of no controlling importance, in determining whether this suit imposed an unreasonable burden on interstate commerce, the fact that the defendant here was operating its facilities regularly within the State of Minnesota, as surely as does a railroad.

The foregoing analysis demonstrates clearly, we believe, that this Court, which is the final authority on the question, regards the fact of operation or non-operation within the state as the key factor. In other words, all of the decisions of this Court above cited, as well as the decisions of other courts, sustain the proposition that where the defendant is operating within the state, the prosecution of a transitory cause of action against it does not unreasonably burden interstate commerce, *irrespective of the residence of the plaintiff and irrespective of the place where the cause of action arose*; but, where the defendant is not operating within the state (and assuming jurisdiction can be obtained), the prosecution of such an action is an unreasonable burden upon interstate commerce, *unless* the cause of action arose within the state.

So, in the present case, where jurisdiction has been obtained by ancillary process and the defendant carries on regular operations within the state, even though its operations are interstate in character, the Minnesota Supreme Court should have held that there was no undue burden upon interstate commerce and should have permitted the trial of this cause of action.

It is clear that the mere question of convenience or inconvenience of transporting witnesses to the state where jurisdiction is sought is not alone controlling, for in the *Hoffman* case, supra, witnesses were to be taken from Kansas to Missouri; and in the *Terte* case, supra, as to the Santa Fe, the witnesses were to be taken from Colorado to Missouri. In fact, this Court has expressly repudiated convenience or inconvenience of the parties as a determining factor by the following language from the *Terte* case:

> "Courts could not undertake to ascertain in advance of the trial the number and importance of prob-

able witnesses within and without the state, and retain or refuse jurisdiction, according to the relative inconvenience of the parties."

In the *Hoffman* case, even though witnseses were required from outside the state on a foreign cause of action and even though securing the presence of those witnesses would as greatly inconvenience the carrier and cause expense probably as great as the inconvenience and expense in the *Davis* case, this Court held that there was no burden on interstate commerce because the defendant operated in the State of Missouri. It is true that it was also incorporated in Missouri; but undoubtedly this was not considered important, as this factor could in no manner affect interstate commerce. It is no more burdensome to defend a suit where the interstate carrier is not incorporated than where it is incorporated, if the cause of action in both cases arose at a remote place.

The fact that the cause of action arose outside the state was not alone controlling in either the *Hoffman* case or (as to the Santa Fe) the *Terte* case. In neither of those cases did the transaction out of which the cause of action arose take place in the state where the suit was brought. Yet in both cases the burden was held not to be unreasonable.

Again, in *Michigan Central v. Mix*, supra, and as to the Rio Grande in the *Terte* case, the residence of the plaintiff, acquired *after the cause of action arose*, was not alone sufficient to eliminate the burden; nor was his nonresidence sufficient to impose it in the *Hoffman* case.

An analysis of the six decisions of this Court, and particularly of that in the *Terte* case, demonstrates that the ultimately controlling factor is the operation or non-operation of its facilities by the defendant within the state. Our

position as to this is adequately set forth by Mr. Justice Loring (R. 73-74) in his dissenting opinion in the court below:

> "In that case (the *Terte* case) an employe at an interlocking track and signal plant, after acquiring a bona fide residence in Missouri, sued, in that state, the Rio Grande Railroad and the Santa Fe, by both of which he had been employed, for injuries received in Colorado. The Santa Fe was a Kansas corporation licensed to operate its railroad in Missouri, whereas the Rio Grande operated no road in that state. Jurisdiction of the latter was sought by garnishment of traffic balances owed it by several railroad companies. It was held that a trial in Missouri would unreasonably burden interstate commerce as to the Rio Grande but not as to the Santa Fe. If the bringing of witnesses from Colorado were the controlling feature of the burden upon commerce, it was equally as burdensome for the Santa Fe as for the Rio Grande. Evidently we must look farther for the controlling distinction. The Santa Fe although a foreign corporation operated a railroad in Missouri. On the authority of Hoffman v. Missouri ex rel. Foraker, 273 U. S. 21, 71 L. Ed. 905, the court said the burden on the Santa Fe was not unreasonable. Hoffman was a resident of Kansas suing a Missouri railroad for injuries received on its line in Kansas. One of the controlling considerations moving the Supreme Court to hold the burden not unreasonable was the operation of the defendant's road in Missouri. True it was a Missouri corporation, but the state of incorporation is not controlling, because in the *Terte* case the Santa Fe was a nonresident, though licensed in Missouri. If the taking of witnesses from one state to another were the controlling consideration, the residence of the defendant would make no difference.
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> "*If any logical deduction can be drawn from the various cases, it seems to me that the operation of a railroad within the state where jurisdiction is sought is the important and controlling consideration.* So far as

commerce is concerned, I cannot see the distinction between operating a railroad into a state, as did the Santa Fe in the *Terte* case, and operating a line of steamships into one of its ports as in the case at bar." (Italics ours.)

The fact that such operation of the defendant's facilities is wholly in interstate commerce does not change the situation because, as this Court said in the *Davis* case:

> "The fact that the business carried on by a corporation is entirely interstate in character does not render the corporation immune from the ordinary process of the courts of a state. International Harvester Co. v. Kentucky, 234 U. S. 579, 58 L. Ed. 1479, 34 Sup. Ct. Rep. 944. The requirements of orderly, effective administration of justice are paramount."

2. The prosecution of the action in Minnesota does not constitute an undue burden upon interstate commerce because the plaintiff is, in legal effect, a resident of Minnesota.

In the foregoing discussion it may be that we have not attached sufficient importance to the fact that the plaintiff, in contemplation of law, is a resident of the State of Minnesota.

That the plaintiff here is a resident cannot be successfully controverted, as we have shown above. This position is in accord with the statement of this Court in the *Taylor* case, supra, where the plaintiff, The American Fruit Growers, Inc., was a Delaware corporation, "with a usual place of business in Missouri.". As to this, the Court said (266 U. S. 200, 207):

> "Here *the plaintiff consignee is a resident of Missouri,*—that is, has a usual place of business within the State;" (Italics ours).

In the majority opinion below, the court said, in regard to this element (R. 69-70):

> "We do not forget that plaintiff has a corporate residence in Minnesota, or that, although a foreign corporation, its principal office is here. That circumstance tends to reduce its unreasonableness, but it does not at all lessen the burden to interstate commerce which would result from the prosecution of this action in Minnesota."

However, this Court said, in the *Davis* case:

> "It may be that a statute like that here assailed would be valid although applied to suits in which the cause of action arose elsewhere, if the transaction out of which it arose had been entered upon within the state, *or if the plaintiff was, when it arose, a resident of the state.* These questions are not before us and we express no opinion upon them." (Italics ours).

Although the last quotation is dictum, it has in all probability impelled some courts to consider the question of the plaintiff's residence as a matter of very considerable importance.

Cressey v. Erie R. Co., 278 Mass. 284, 180 N. E. 160.

Johnston v. Atlantic Coastline R. Co., 128 Misc. Rep., 82, 217 N. Y. S. 758.

Griffin v. Seaboard Airline Ry. Co., (D. C. Mo.) 28 Fed. 2d, 998.

American Railway Express Co. v. Rouw Co., 173 Ark. 710, 294 S. W. 401.

In this connection we note that in the *Mix* case and in the *Terte* case the plaintiff's residence in the state was ac-

quired before suit but *after the cause of action had arisen,* which this Court held was not sufficient to remove the burden upon interstate commerce.

While it is not specifically so stated, it is altogether possible that the plaintiff's change of his residence after the cause of action arose and before the bringing of his suit, might have been for the mere purpose of seeking a more favorable forum, which fact, naturally, should not be of sufficient importance to weigh against the inconvenience of the carrier and the resulting burden on interstate commerce.

As the Court said in *Cressey v. Erie R. Co.,* supra:

> "The problem is to balance the interests of individuals in enforcement of private rights, on the one side, against the interests of the public as a whole in untrammeled and efficient interstate transportation on the other side.
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> * * *
>
> "In general one has a right to seek redress of his grievances in the forum of his domicil, provided the courts of his domicil can secure jurisdiction over his adversary. The plaintiff is not making use of the courts of his domicil to secure any advantage over the defendant. The maintenance of an action in our courts will not cause any greater interference with interstate commerce than was held to be permissable in Hoffman v. Missouri ex rel. Foraker, 274 U. S. 21, 47 S. C. 485, 71 L. Ed. 905, where the plaintiff left the state of his own domicil, in which the cause of acton arose, to bring suit in the state of the domicil of the defendant, to the inconvenience of the latter. We think that the trend of the decisions already reviewed favors the contention of the plaintiff. This conclusion finds support in the decisions of some inferior federal courts. Maverick Mills v. Davis, (D. C.) 294 Fed. 404; Griffin v. Seaboard Airline Ry. (D. C.) 28 Fed. 2d, 998; id., (D. C.) 38 Fed.

2d, 98. It is in accord with Reynolds v. Missouri, Kansas & Texas Ry., 228 Mass. 584, 588, 117 N. E. 913; Martin v. West, 222 U. S. 191, 32 S. C. 42, 56 L. Ed. 159, 36 L. R. A. (NS.) 592.

> "On principle we think that the right and convenience of the plaintiff to maintain the action in the courts of his domicil outweigh the inconvenience to interstate commerce which may result from the presentation of its defense in the courts of this commonwealth by the defendant. The plaintiff's cause of action against the defendant is his property. * * * To compel him to leave the courts of his domicil, where he has secured by attachment property of the defendant, and thus to that extent jurisdiction over the defendant, to go to a foreign state to prosecute that cause of action with the added expense and inconvenience, savors of deprivation of property without due process of law. These factors in conceivable cases might be such an obstacle to a plaintiff as to prevent any attempt to enforce his cause of action. While not theoretically taken away, the cause of action might be so hedged with burdens touching its enforcement as to render it practically much reduced in value. * * * * Accepting the test that the 'requirements of orderly, effective administration of justice are paramount' (262 U. S. 316, 43 S. C. 556, 558, 67 L. Ed., 996), we think that the plaintiff is entitled to prosecute the present action."

In the *Cressey* case, from which the foregoing has been quoted, the plaintiff was a resident of Massachusetts. The defendant was a foreign corporation, having no agent or place of business within that state. The action was on contract to recover the value of a car of hay alleged to have been sold wrongfully and against the rights of the plaintiff by the defendant, to pay freight and demurrage charges. The defendant appeared specially and filed a motion to dismiss the action for the reason that the prosecution of the action "is an unreasonable burden on interstate commerce, that the

statute allowing the attachment of property in this commonwealth is void so far as applicable to this case, and that therefore the court is without jurisdiction."

The cause of action arose in Georgia. Jurisdiction (to the extent of the property attached) was obtained by attachment of funds which arose out of interstate commerce transactions and balances.

It is thus seen that the *Cressey* case is, in effect, precisely like this case at bar; and if the Massachusetts Supreme Court is correct in its conclusion that the residence of the plaintiff within the state is a controlling element, the same feature would apply with greater force in the case at bar because, in addition, we have here a defendant which actually brings its property within the state, makes use of its terminal facilities and traverses its territorial waters.

To use the language of this Court in the *Taylor* case, as it was applied to a foreign corporation doing business in Missouri, the plaintiff here is a resident of Minnesota—that is, has a usual place of business within the state. Furthermore, it was such *at the time the cause of action arose,* and it should, therefore, not be precluded from seeking relief in the courts of the state of its residence, even though interstate commerce thus might incidentally be burdened to a slight extent.

CONCLUSION

Although it appears clearly from the six decisions of this Court, which have been discussed in this brief, that the operation of the defendant's facilities within the state where jurisdiction is sought is the important and controlling factor, in determining whether the prosecution of a suit such as this constitutes an unreasonable burden upon interstate

commerce, we feel justified, from the dictum in *Davis v. Farmers Cooperative Co.*, above referred to, in believing that this Court may also consider the fact that the plaintiff is a resident of the state as a factor in its favor. The arguments of the Massachusetts Supreme Court in *Cressey v. Erie R. Co.*, supra, seem to us to be logical and unanswerable; and if this Court regards either one or both of these factors as controlling as to the reasonableness of the burden upon interstate commerce, the judgment of the court below must be reversed.

It is, therefore, respectfully submitted that the plaintiff, a resident of Minnesota, should not be deprived of the use of what, in legal effect, is its home forum, even though the defendant's operations in Minnesota are interstate in character; and that the interests of justice, as well as the decided cases of this Court, require that the judgment of the Minnesota Supreme Court be reversed.

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